IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WP(C).No. 8455 of 2007(F)

OS.77/1995 of PRL.M.C., KOTTAYAM

.....

PETITIONER:

NISSARKUTTY T.H.,
MANGATTUKALAYI HOUSE,
PERUMBAIKADU P.O.,
KOTTAYAM- 686 028.

BY ADV. SRI.MATHEW PHILIP EDAPPALLIL

RESPONDENTS:

C.C.JOHN,
PULILCKAPARAMBIL,
PUTHANANGADI,
KOTTAYAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. Balachandran, J.

W.P.(C)No. 8455 of 2007 F

JUDGMENT

Heard counsel for the petitioner.

2. The petitioner is the second plaintiff in O.S.No.77/95 on the file of the Principal Munsiff's Court, Kottayam. Initially, the suit was decreed, grating decree of permanent prohibitory injunction as prayed for. In appeal filed by the respondent/ defendant, the case was remanded back to the trial court, setting aside the decree appealed against for fresh disposal, after affording an opportunity to the respondent/defendant as also to the plaintiffs to adduce further evidence, if they so desire. The appellate court also forwarded the Commission application filed by the respondent/ defendant to the court below to pass appropriate orders. Accordingly, it is submitted that the commission application was allowed and the Commissioner filed Exhibit P8 report on 25.11.2006.

2. Counsel for the petitioner submits that immediately after filing the report, the suit was listed for trial in the special list to 1.3.2007, but that, in the meanwhile, on 17.2.2007, Advocate Sri.C.T.Rejimon, who was appearing for the petitioner in the trial court, met with an accident, wherein both his legs got fractured; that he is admitted in the Medical College Hospital at Kottayam; that thereupon the present counsel, who is appearing before me, had to file fresh vakalath and prayed for adjournment of the case, as he got instructions from the parties to appear for them only two days earlier and that after taking up engagement, he filed Exhibit P9 application for amendment of the plaint; Exhibit P10 application to remove the case from the list; Exhibit P11 application to have arguments heard on the amendment application before trial begins as also an objection to the Commissioner's report and that the court below, without passing orders on the

amendment application, is proceeding with the trial of the case and it now stands adjourned to 15.3.2007.

4. In the circumstances above stated, but all the same, to avoid further delay in the matter, I dispose of this writ petition without notice to the respondent, directing the court below to pass appropriate orders on Exhibit P9 application for amendment of the plaint and if need be, to remove the suit also from the list, as the counsel has taken up engagement for the plaintiffs only two days before the case stood posted for trial in the special list, due to unavoidable circumstances. It is made clear that this writ petition is being disposed of in this manner, accepting the submission that Advocate Sri.C.T.Rejimon got disabled, in view of the accident and with a view to avoid further delay by issuing notice to the respondent. Petitioner is at liberty to produce a copy of this judgment before the trial court to

comply with the above directions.

13th March, 2007 (K.P.Balachandran, Judge)

tkv